

Debtors' Ex. 102

(H. B. 4742)
(Conference)

(No. 214)

(Approved August 18, 2004)

AN ACT

To authorize the Secretary of the Department of Economic and Commercial Development and the President of the University of Puerto Rico to establish through public deed a trust which shall be known as the "Puerto Rico Science, Technology and Research Trust"; to establish the Puerto Rico Science, Technology and Research Fund under the control and custody of the Government Development Bank for Puerto Rico; add a new subsection (O) to paragraph (1) of clause (j) of Section 2 of Act No. 8 of January 24, 1987, as amended, known as the "Puerto Rico Tax Incentives Act;" amend subsection (K) and subsection (L) and add a new subsection (M) to paragraph (1) of clause (j) of Section 2 of Act No. 135 of December 2, 1997, as amended, known as the "Tax Incentives Act of 1998;" add a new subsection (bb) to Section 5.01 of Act No. 83 of August 30, 1991, as amended, known as the "Municipal Property Tax Act of 1991;" and to amend Section 6 of Act No. 101 of May 12, 1943, as amended.

STATEMENT OF MOTIVES

The public policy on the economic development of Puerto Rico demands the reorientation of our economy with a futuristic vision and to temper it to the world economic trends and advances in science, information science and technology. As part of said vision, it is important to protect and support the traditional sectors of agriculture, manufacturing, tourism, services and cooperativism. However, taking into consideration the globalization of economy, and the constitution of regional economic blocks, it is essential to promote modern economic development initiatives that allow diversification of our economy and making it evermore competitive.

world it is necessary to join research efforts for the creation of products geared towards services that promote the adoption of technology in different fields and that shall eventually allow the commercialization and distribution of new inventions and tangible products. Likewise, the research, development, or the application of computer tools is necessary to expand the use of biological, medical, health and social conduct data. These tools should also include those that are used to acquire, store, organize, file, analyze and visualize this data. Lastly, the convergence of video and telephone data in a single platform, using the Internet protocol, requires incrementing the communications infrastructure in the Island, and that research and studies program be fostered so as to promote the boom of products and services geared to these global markets, particularly in a world in which there is a lack thereof in the Spanish language.

An economy based on knowledge, high technology models and technological innovations provide the foundations for worldwide competition. Sponsoring, supporting and promoting research and developmental activities in Puerto Rico and marketing their results is an essential step for the continuing success of existing industries and for the development of new activities. It is also indispensable to strengthen the transfer of technology through mechanisms that protect and market the intellectual product of local investors and that allow the transfer of technology to new industries. Ultimately, the formation of human capital in these areas provides the foundation for the creation of sustained wealth for any country in the present global economy.

The Puerto Rican Project for the 21st Century incorporated by the 2001-2004 Government Program recognizes that the new economy is based on high technology industries and information science, and that a public

become a preferred location for the attainment of alliances between the public, private and academic sectors. In the measure that the Commonwealth of Puerto Rico accelerates the implementation of science, technology and research initiatives and fosters the development of new markets, it shall make it possible to open doors for new investors and for the proliferation of new employment sources that shall result in a better wellbeing for our people.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1. -Title of the Act.

This Act shall be known as and may be officially cited as the “Puerto Rico Science, Technology and Research Trust Act.”

Section 2.-Definitions.

Every term used in this Act to refer to a person or office shall refer to both genres, and the following terms, whenever used in this Act, shall have the meaning stated hereinafter, except when otherwise provided in the context:

(a) Eligible Activities – shall mean:

1. science and technology research or development activities in the following areas:
 - (i) information and communications technology;
 - (ii) creation of data, video and telephone convergence protocol;
 - (iii) infrastructure of information science, data, video and multimedia transmissions;
 - (iv) development of programs that promote the use of new methods to access health systems, to wit: telemedicine and distance education.

3. rendering of services and technology including, advisory, consultative, and studies, analysis, collection, management and administration of intellectual property, implementation and management of incubators and financing of innovations and inventions;
 4. attracting scientific human resources to Puerto Rico, under the terms defined by the Council of Trustees;
 5. construction and development of scientific parks or development of the adequate social infrastructure for research or development of science and technology activities;
 6. other activities that the Council of Trustees designates as eligible activities, provided that it determines that they shall result in the growth of research or development in science and technology in Puerto Rico.
- (b) Federal Agency – shall mean the United States of America, its President, any of the departments of the Executive Branch of the Government of the United States of America or any corporation, agency or instrumentality created or that could be created, designated or established by the United States of America.
- (c) Bank – shall mean the Government Development Bank for Puerto Rico, created by virtue of Act No. 17 of September 23, 1948, as amended.
- (d) Science – shall mean the set of knowledge obtained through observation, experimentation and reasoning, systematically structured and from which principles and general laws are

2. costs of recruiting talent, which shall be defined by regulations by the Council of Trustees;
 3. costs of acquisition of land, construction of buildings, development of the necessary social infrastructure or the adaptation of existing facilities;
 4. fees for consulting services or any other type of remuneration paid to technical advisors consulted with regard to a research and development, payment of salaries, stipends, traveling expenses and per diems to be paid to persons for research or development activities or with the identification of development of products, services and processes; and
 5. general, administrative and operating expenses.
- (i) Department – shall mean the Department of the Department of Economic Development and Commerce.
 - (j) Development – shall mean activities directed to the improvement or establishment of materials, products, components, systems or services with innovative attributes.
 - (k) Executive Director – shall mean the Executive Director of the Trust.
 - (l) Benefited Entity – shall mean any natural or juridical person, including any government entity which is provided with funds from the Trust.
 - (m) Deed of Trust – shall mean the public deed through which the Fund is created issued by the Secretary of Economic Development and Commerce and the President of the University of Puerto Rico, acting as trustors;

- (w) Technology – shall mean the group of theories, knowledge and techniques that allow for the practical attainment of scientific knowledge, including industrial instruments and procedures of a determined sector or product;
- (x) Information and Communications Technology – shall mean the attainment or practical application of the knowledge of information and communications science, and comprises any communications device or software including, but not limited to radio, television, cellular phones, computers, data equipment, network equipments, programs, satellite systems, as well as services and software related thereto such as video conference and distance education, and computer tools to acquire, store, organize, file, analyze and visualize data;
- (y) University – shall mean the University of Puerto Rico.
- (z) Private University – shall mean any private university licensed by the Council on Higher Education of Puerto Rico.

Section 3.-Creation, Purposes and Duties

The Secretary of the Department of Economic Development and Commerce and the President of the University of Puerto Rico are hereby authorized, as trustors, to grant a deed of trust through which a nonprofit trust shall be established, and which shall be known as the Puerto Rico Science, Technology and Research Trust, hereinafter “the Trust.”

(a) The purpose of the Trust shall be to define and implement the public policy of the Commonwealth of Puerto Rico for science and technology research and development which shall include the establishment of an alliance between the Government and the private sector for the promotion and development of the same for the benefit of all Puerto

- through the creation of alliances between the government and the academic and industrial sectors of the country;
2. help to promote the development of the educational and social infrastructure needed for enhancing the scientific and technical fields;
 3. support the commercialization of products and services based on science, technology or research;
 4. increase the financing available for science and technology research and development activities in the academic institutions of Puerto Rico;
 5. identify the capital and financing needed for science and technology research and development initiatives;
 6. promote private investments in science and technology research or development activities and projects and in burgeoning high technology and multinational companies highly active in Puerto Rico;
 7. increase the investment in innovations through the alliance of public and private institutions
 8. establish initiatives to copyright and protect intellectual property, the work of the

citizens. The Deed of Trust shall provide that the six (6) private citizens shall be trustees for a term of six (6) years and until their successors are appointed. Three (3) of the six (6) private citizens must be or must have been members of the university community as professors or researchers, three (3) must belong to the private sector in the field of high technology. Two (2) of the six (6) private citizens must be internationally recognized in their field and two (2) of the private citizens must be generally familiar with the biological sciences and matters of health as well as with information and communications technologies, the recent research trends in those areas and the technical and scientific mechanisms used to translate new knowledge into applications that would foster economic development.

(b) The Secretary of the Department of Economic Development and Commerce, the President of the University of Puerto Rico, the President of the Government Development Bank for Puerto Rico, the Executive Director of the Industrial Development Company and the Executive Director of the Office of Management and Budget shall initially designate the first six (6) private citizens that shall act as trustees. Said designations shall be made for the following terms: one trustee for three (3) years; another for four (4) years; two (2) trustees for five (5) years and another two (2) trustees for six (6) years. Any vacancy in the position of trustee held by the private citizens that arises before the term of said position has expired shall be covered by a new appointment for the remaining term. No member of the Council of Trustees may serve as trustee for more than two consecutive terms of six (6) years.

(c) The private citizens who succeed the private citizens originally appointed as members of the Council of Trustees, as well as the private citizens designated to fill the vacancy of any position held by a

entitled to receive the basic per diem established through the unanimous vote of the Council.

(g) A majority of the members of the Council shall constitute quorum for all purposes, and the decisions shall be reached by the majority of those present. Provided that any action that needs to be taken or that is allowed during any meeting of the Council shall be authorized without the need for a meeting as long as all the members of the Council give their consent in writing to such an action. In such a case, the written document shall be entered into the minutes of the Council. It is furthermore provided that the members of the Council may respectively participate in any meeting of the Board or in any committee or commission thereof, through telephone conference or other means of communication through which all persons participating in the meeting may be heard simultaneously. The participation of any member of the Council at a meeting in the manner described above shall constitute attendance to said meeting.

Section 5.-Rights, Powers and Duties of the Council of Trustees.

(a) The Council of Trustees shall have all those powers and faculties that are expressly conferred upon the trustees in the Deed of Trust, subject to Section 834 to 874, inclusive of the Puerto Rico Civil code of 1930, as amended, including the power to sue and be sued as trustees as representatives of the Trust. The Deed of Trust shall provide the powers and duties of the Council of Trustees, which shall include, among others, the following:

1. act as the governing body of the Trust;
2. establish the general policy of the Trust to fulfill the objectives of this Act;

9. implement the public policy and the objectives of the Trust pursuant to this Act;
10. determine the programmatic areas and priorities of the Trust and approve the work plans prepared pursuant to the same;
11. delegate on any agency of the Government of the Commonwealth of Puerto Rico the execution of measures, plans and projects of the Trust approved by the Council of Trustees pursuant to this Act;
12. contract, establish agreements and alliances with public or private juridical persons or entities needed to properly fulfill the responsibilities provided in this Act;
13. acquire personal and real property in any legitimate way, including by concession, gift, purchase, legacy or donation and possess and exercise all property rights over these, as well as the power to dispose of them;
14. obtain money on loan and issue notes, bonds and any other evidence of debt of the Trust in order to provide funds to defray the operating costs of the Trust, make investments or provide financial assistance to the projects of the Trust, pay the costs for acquiring any property for the Trust, fulfill any of its goals, refinance, pay and redeem any of its notes, bonds or other obligations. The Trust may guarantee the payment of its notes, bonds and all

19. negotiate and execute with any person, including any Federal or Commonwealth government agency, any type of contract and all those instruments and agreements necessary or convenient to exercise the powers and functions conferred to the Trust under this Act;
20. create, at its discretion, advisory councils to provide the Trust with specializes technical and scientific advise and provide for the organization and operation of the same;
21. use the moneys of the Trust provided said use is in harmony with the purposes of this Act;
22. formulate periodically and in coordination with the Executive Director of the Industrial Development Company the policy for the investment of the resources of the Economic Development Special Fund, it being understood, however, that the authority of the Company over the management of the moneys of the Special Funds not transferred to the Trust remains unaltered; and
23. exercise all powers inherent to the functions, prerogatives and responsibilities conferred by this Act and exercise all those other powers conferred by the Deed of Trust.

(b) The Council of Trustees shall establish through regulations the criteria to be used to disburse the moneys of the Trust.

iv. five million (5,000,000) dollars per year beginning in fiscal year 2005-2006, proceeding from the balance of the moneys collected on account of the federal excise taxes sent to the Department of the Treasury of Puerto Rico each fiscal year, according to Section 7652(a)(3) of the United States Internal Revenue Code of 1986, as amended, available after the Department of the Treasury has complied with the transfer of the first moneys collected on account of said excise taxes to the Authority for the Financing of the Infrastructure of Puerto Rico pursuant to Section 25 of Act No. 44 of June 21, 1988, as amended. In case there should not be any surplus funds from that distribution, the revenues needed for the Puerto Rico Science, Technology and Research Trust Fund shall proceed directly from the General Fund; and

v. private donations, government funds, legislative appropriations, federal concessions or grants and gifts.

On or before ninety (90) days after the close of every fiscal year of the Commonwealth of Puerto Rico, the Secretary of the Treasury shall render a report to the Board of Trustees concerning the revenues transferred to the Fund pursuant to this Act.

(b) The Council of Trustees may create within said Fund any accounts the Council may deem necessary. These shall be deposited on credit to the Fund, in those accounts as determined by the Council of Trustees, all contributions received by the Trust and all income received from the investments made with the moneys covered into the Fund.

(c) The moneys covered into the Fund may be invested in any obligation or instrument approved by the Bank pursuant to Act No. 113 of August 3, 1995, as amended. The Bank shall ensure that the investments authorized in this Act generate the highest yield allowed by market

recognition of young researchers with proven capacity for competitive research;

3. create a dynamic and effective structure for the commercialization of the products of the science and technology research programs that may be used by academic institutions or by private companies to protect intellectual property and to improve the capacity for producing and developing new products according to the terms of the Memorandum of Understanding executed between the University and the Industrial Development Company of Puerto Rico on February 11, 2004.

(c) Between twenty (20) and thirty (30) percent of the funds in the annual budget of the Trust available for investing in Trust projects must be used to provide financial support for the development of research infrastructure such as:

1. investment in private or public institutes specializing in information and communications technology, including institutes proposed or operated by companies eligible under the program whose participants receive funds, through competitive mechanisms, for their research programs;
2. institutions, collaborations or programs directly related to corporate research and development;
3. financial support for the development of incubators related to support centers in key locations, and

time, the needs of the industry or the academy and the number and merit of the proposals received.

Section 8.-Process for Applying for and Evaluating the Disbursement of Funds.

(a) The Council of Trustees shall approve the standards and rules for the presentation, evaluation and selection of proposals and applications for funds for Trust projects. The regulations must include the criteria the Council shall apply when making its decisions as to the qualification and selection of the proponents and the adjudication of the contracts. The selection criteria shall include, without it being understood as a limitation, the following:

1. the commercial and financial reputation of the proponent and its economic, technical or professional capacity; the experience of the proponent to develop and conduct science and technology research and development activities to improve the existing manufacturing processes or develop new ones or manufacture innovative products and market the same;
2. the competitive funds for scientific research the proponent has received.
3. the accreditation of the proposing institutions on its programs by federal or external agencies;
4. the competitiveness of the faculty or human resources of the proponent;
5. the competitiveness of the student body of the proponent;

receiving, evaluating and adjudicating proposals is provided; that all information which constitutes (1) business secrets, (2) proprietary information and (3) privileged or confidential information is excluded from examination and public diffusion; and that the standards of conduct that must be observed by the officers and employees of the Trust regarding the management, diffusion and publication of all information received by the Trust during the process of receiving, evaluating and adjudicating proposals and the sanctions for violation of said standards entails, are provided.

Section 9.-Tax Exemption.

(a) It is hereby stated that the purpose for which the Trust is to be established and for which it shall exercise its powers are public purposes for the benefit of the People of Puerto Rico. The Trust shall be exempted from the payment of all taxes, license taxes, fees or excise taxes imposed by the Commonwealth of Puerto Rico or its municipalities.

(b) The Trust shall also be exempted from the payment of any type of internal revenue fees, stamps or vouchers, excise taxes or taxes of any nature required by law for transacting judicial procedures, issuing certificates from any office or dependency of the Government of the Commonwealth of Puerto Rico and granting public documents and registering the same with any public registry of the Commonwealth of Puerto Rico.

Section 10.-Annual Report.

Every year, within the one hundred and twenty (120) days after the close of the fiscal year, the Trust shall submit a report to the Governor as well as to the President of the Senate and the Speaker of the House of Representatives. Said report shall include the following:

(d) The Office of Management and Budget is likewise empowered to conduct audits and studies concerning the activities and achievements of the Trust and on its fiscal operations.

Section 12.-Eligibility of the Trust for Obtaining Tax Incentives as provided in Act No. 8 of January 24, 1987, as amended.

A new paragraph (O) is hereby added to clause (1) of subsection (j) of Section 2 of Act No. 8 of January 24, 1987, as amended, to read as follows:

“Section 2.-Definitions.

For the purposes of this Act, the following terms, phrases and words shall have the meaning expressed below:

(a) ...

(j)(1) Income from eligible activities. – Shall mean:

(A) ...

(O) Notes, promissory notes, bonds or any other evidence of indebtedness issued by the Puerto Rico Science, Technology and Research Trust established through public deed granted by the Secretary of Economic Development and Commerce and the President of the University of Puerto Rico as trustors.”

Section 13.-Authorization for Additional Tax Incentives according to Act No. 135 of December 2, 1997, as amended.

Paragraphs (K) and (L) are hereby amended and a new paragraph (M) added to clause (1) of subsection (j) of Section 2 of Act No. 135 of December 2, 1997, as amended, to read as follows:

“Section 2.-Definitions.

For the purposes of this Act, the following terms, phrases and words shall have the meaning expressed below:

(a) ...

(bb) The property of the Puerto Rico Science, Technology and Research Trust established through public deed granted by the Secretary of Economic Development and Commerce and the President of the University of Puerto Rico as trustors.”

Section 15.-A second paragraph is hereby added to Section 2 of Act No. 101 of May 12, 1943, as amended, to read as follows:

“Section 2.-

On every original document or instrument authorized by a notary public for protocolization, and on copies thereof, there shall be affixed and cancelled internal revenue stamps of the following values and denominations:

Also provided, that the provisions of this Section shall not apply to those deeds whereby the Conservation Trust of Puerto Rico, as the latter has been established and is operated pursuant to the provisions of Deed Number of January 23, 1970, executed by Notary Public Luis F. Sánchez Vilella and the Puerto Rico Science, Technology and Research Trust established through public deed granted by the Secretary of Economic Development and Commerce and the President of the University of Puerto Rico as trustors, acquire, assign, encumber or transfer assets related to the purpose for which said Trusts were established and organized.”

Section 16.-Severability.

Should any provision, word, sentence, subsection or Section of this Act were to be impugned for any reason by a court and declared unconstitutional or null, said sentence shall not affect, impair or invalidate the remaining provisions of this Act.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 214 (H.B. 4742) (Conference) of the 7th Session of the 14th Legislature of Puerto Rico:

AN ACT to authorize the Secretary of the Department of Economic and Commercial Development and the President of the University of Puerto Rico to establish through public deed a trust which shall be known as the "Puerto Rico Science, Technology and Research Trust"; to establish the Puerto Rico Science, Technology and Research Fund under the control and custody of the Government Development Bank for Puerto Rico; add a new subsection (O) to paragraph (1) of clause (j) of Section 2 of Act No. 8 of January 24, 1987, as amended, known as the "Puerto Rico Tax Incentives Act;" etc.,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 8th of July of 2005.

Luis E. Fusté-Lacourt
Director